



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: H. Watt & Scott General Contractors, Inc.--
Request for Declaration of Entitlement to
Costs

File: B-257776.3

Date: April 6, 1995

Grant E. Watts, Esq., Wade & De Young, for the protester.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protester is not entitled to reimbursement of the costs of
filing and pursuing protest under section 21.6(e) of Bid
Protest Regulations where the agency's decision to cancel
the solicitation was not corrective action taken in response
to the protest.

DECISION

H. Watt & Scott General Contractors, Inc. requests that our
Office declare it entitled to recover the reasonable costs
of filing and pursuing its protest against the proposed
award of a contract to Woodard Construction under invitation
for bids (IFB) No. N651-IFB4-2034, issued by the Department
of the Interior for construction of an environmental
education center in Anchorage, Alaska.

We deny the request.

The IFB consisted of schedule A, which included two line
items comprising the base bid, and schedule B, consisting of
five option items. The solicitation included Federal
Acquisition Regulation § 52.217-5, Evaluation of Options,
which stated that the government would evaluate the base bid
as well as all options unless it determined that it was not
in its best interest to evaluate the options. The
solicitation also stated that the award would be made for
the base bid plus the options for which funds were
available, and that when additional funds became available
in fiscal year 1995, the remaining options would be
exercised. Seven bids were submitted and Woodard's bid was
low based on an evaluation of the base bid items and all
option items.

On June 30, 1994, H. Watt protested that the award to Woodard was improper because the agency did not have sufficient funds to award the base and option items and therefore should not have evaluated the option items. If only the base items were considered, H. Watt's bid was low. On July 19, the agency submitted its protest report and on August 1, H. Watt submitted a second protest and requested additional documents. For a number of reasons, including its inability to locate all the documents requested, and questions concerning whether H. Watt's attorney could have access to all the requested documents without being admitted under a protective order, the agency did not finish providing documents to H. Watt until September.

On October 17, before it submitted its report on the second protest, the agency canceled the solicitation, primarily because the winter weather in Alaska would not permit construction to proceed, and the solicitation did not include a winter shutdown clause. The agency also considered that there were no utilities available under the solicitation and the contractor would have to rely on temporary utilities, while in the spring, when the agency intended to resolicit, there would be commercial utilities available which would reduce construction costs. Finally, the agency considered that while at the time the award was made there was a reasonable certainty that funds for the optional work would be available, this was no longer true. We dismissed the protest because the agency's cancellation of the solicitation rendered the protest academic.

H. Watt requests that we find it entitled to recover the costs of filing and pursuing its protest and its bid preparation costs under 4 C.F.R. § 21.6(d) and (e) (1995), because the agency's cancellation of the solicitation was in fact corrective action taken in response to H. Watt's protests. H. Watt stresses that in its decision to cancel the solicitation the agency stated that it was no longer reasonably certain the funding for the options would be available, an allegation H. Watt made in its protest.

Under the Competition in Contracting Act of 1984, our Office may find a protester entitled to protest costs where an agency takes corrective action on a clearly meritorious protest and the corrective action is not promptly taken. 31 U.S.C. § 3554(c)(1) (1988); Network Software Assocs., Inc.--Request for Declaration of Entitlement to Costs, 72 Comp. Gen. 78 (1993), 93-1 CPD ¶ 46. Here, the agency's decision to cancel the solicitation was not corrective action taken in response to H. Watt's protest. Rather, the cancellation was based on the inability to proceed with work due to weather conditions in Alaska. The agency also considered that because commercial utilities would be available in the spring, costs would be lower.

While the agency also recognized that it was no longer clear that funding would be available for all the options, it did not admit or premise its cancellation on any belief that it improperly evaluated all options, the underlying premise of H. Watt's protest. Accordingly, H. Watt is not entitled to recover its protest costs based on the theory that the agency's decision to cancel the solicitation was corrective action taken in response to H. Watt's protest.

H. Watt has also requested that we find it entitled to its protest and bid preparation costs as a sanction against the agency for failing to provide requested documents for 2 months. We point out that our Regulations do not specifically authorize costs as a sanction for delays in furnishing requested documents. 4 C.F.R. § 21.3(i). Regardless, here, we do not think the facts would merit such a sanction.

The request for declaration of entitlement to costs is denied.

\s\ Michael R. Golden
for Robert P. Murphy
General Counsel

¹Although H. Watt also requests bid preparation costs, even if the Department of the Interior had taken corrective action in response to the protest, our Bid Protest Regulations do not allow for the reimbursement of bid preparation costs where an agency takes corrective action. Loral Fairchild Corp.--Entitlement to Costs, B-251209.2, May 12, 1993, 93-1 CPD ¶ 378.